Vendor Complaint Process

NOVA SCOTIA

Office of Economic Development
Procurement
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Introduction

The Procurement Branch manages the procurement process for government departments, agencies, boards and commissions. It is the responsibility of the Procurement Branch to ensure compliance with Procurement Policy. This booklet is a guide for the handling of complaints about the procurement process brought forward to government by the vendor community.

For assistance or to provide comments on this process, please contact:

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Government Procurement Policy

The Government of Nova Scotia is committed to:

- ☐ ensuring that the government's requirements for goods, services, construction, and facilities are met through an open and fair process that provides the highest degree of competition and value to the Province
- ☐ ensuring that all bidders have reasonable notice and opportunity to tender
- ☐ fostering economic development by giving every capable Nova Scotia supplier the opportunity to do business with the government
- ☐ encouraging Nova Scotia businesses to be competitive and to sustain quality product development
- ☐ adhering to the Agreement on Internal Trade and the Atlantic Procurement Agreement, which create economic opportunities for Nova Scotians
- ☐ treating out of province bidders in the same way as their jurisdictions would treat bidders from Nova Scotia
- ☐ being accountable to the public for procurement decisions

Scope of the Vendor Complaint Process (VCP)

A method to handle supplier complaints and to improve the governments procurement process is an integral part of a fair and open procurement policy. The following procedures facilitate this objective, allowing government to handle complaints in an organized, consistent manner, and to carry out the analysis and reporting requirements in order to improve upon the procurement process.

A complaint means a written objection submitted by a potential supplier regarding a bid solicitation, contract award or proposed contract award for goods, services, facilities or construction.

Supplier complaints and protests originate for a number of reasons, real or perceived; however, all of these reasons negatively reflect on the integrity of the government procurement process. Some reasons are:

- ☐ specifications that are seen as vague or incomplete (complaints should be received prior to tender close)
- ☐ bid preparation time too short to properly reply (complaints should be received prior to tender close)
- ☐ specifications perceived as unfair, predetermined, or arbitrary (complaints should be received prior to tender close)

- ☐ inconsistent application of procurement procedures
- ☐ violation of an applicable Trade Agreement

Prior to initiating a complaint, suppliers are strongly encouraged to resolve problems by contacting the department involved as the first step in the process. Experience has demonstrated that there are often minor errors, omissions or other inadvertent actions which can be quickly clarified or corrected to the satisfaction of the complainant, thus removing the cause of many complaints and concerns at the outset. For the purpose of clarity, the VCP is not adjudicative in nature and does not establish mechanisms to adjudicate substantive disputes. The VCP provides an opportunity for vendors to voice complaints and may sometimes help to resolve complaints that involve no significant factual or interpretative disagreements between the parties. Fundamental disputes over facts or over legal rights and obligations are, however, beyond the scope of the VCP.

Applicability

This complaint process applies to all procurement activity carried out by Province of Nova Scotia's departments, agencies, boards and commissions.

This process has also been recommended to those organizations that are subject to the Government Procurement Policy, but who have their own integral purchasing groups. This group is commonly referred to as the MASH Sector for Municipalities, Academic Institutions, School Boards, non-designated health organizations, and regional health boards. Publicly funded nursing homes should also consider a complaint process similar to this process. The Province of Nova Scotia Crown Corporations are considered part of the MASH Sector.

Entities in the MASH Sector are encouraged to make available their own vendor complaint process to assist in the consideration of complaints and problems. When complaints are brought to one of these organizations, they are to be dealt with fully and expeditiously.

Where a vendor has a procurement complaint with a MASH entity, the overseeing government department will only intervene where it can be demonstrated the problem or issue has been presented to the entity without satisfaction, and compelling evidence exists to suggest the entity has failed to respect its obligations under the Nova Scotia Government Procurement Policy or applicable trade agreement.

Fair Access for Nova Scotia Companies

The Province of Nova Scotia is committed to ensuring that its supplier community receives fair treatment in their dealings elsewhere in Canada. To help ensure fairness the Procurement Branch, subject to relevant trade agreements, may consider and evaluate bids from other jurisdictions on the same basis that the Purchasing Authorities in those jurisdictions would treat a similar bid from a Nova Scotia supplier.

In those cases where other jurisdictions would not permit a Nova Scotia firm access to opportunities or a bid to be submitted or evaluated, out of a province bidders should understand that such practices on the part of their jurisdiction could result in the rejection of their bid by the Nova Scotia Government. Out of province bidders should also appreciate that the reciprocal application of their

own jurisdiction's practices resulting in a disadvantage to their bid will not be considered a compelling reason for complaint.

Complaint Submission

Complaints are to be in a written form, submitted within 10 working days after a notice of a contract award. Contract notice is the date when the award is posted to the Public Tenders Website. Complaints should contain the following information:

- The name, phone number/fax, e-mail, address and contact person of the firm submitting the complaint.
- The nature of the problem being encountered.
- A description of the background leading to the problem, including relevant dates, tenders reference numbers etc.;
- The department representative contacted to review the problem originally, and the results of those discussions.
- Actions being requested of the Government.

Complaint Process Related to Government Procurement Policy or Practice

The Director of Procurement for the Province of Nova Scotia shall ensure that every department, agency, board or commission affords aggrieved persons an opportunity to present any complaint regarding the government procurement process.

On receipt of a complaint, the Director of Procurement shall review the complaint to determine if further action is appropriate. A complaint may be dismissed without further consideration, where in the opinion of the Director of Procurement, the complaint:

(a.) on its face, is frivolous or invalid.

(b.) the complainant is not a participant in the competitive process (ie. did not submit a bid).

(c.) is in respect of a procurement by an entity that is not a government or MASH entity.

(d.) is made more than 10 working days after a notice of a contract award, or

(e.) is otherwise inappropriate for consideration.

If at this point the complaint is not dismissed, the Director of Procurement will contact the Deputy Head or designated senior representative of the entity concerned to determine if the complaint has already been addressed. If not, the Director of Procurement, or qualified alternate, will endeavour to gather the appropriate competition documents, conducts interviews with department officials and if s/he deems necessary, meets with the complaining party.

At this point the complaint may be resolved, withdrawn or dismissed if in the opinion of the Director of Procurement it is the result of a properly applied fair procurement process.

If dismissed a reply to the complaint will be prepared by the Director of Procurement, and forwarded to the complainant. A record of the dismissal of the complaint will be retained by the Procurement Branch, for subsequent reporting to the Minister of the Office of Economic Development.

Should the Director of Procurement find reason for a more comprehensive review s/he may choose to form a review committee. If formed, the review committee will have representation including the Director of Procurement or a qualified alternate, a senior representative of the department, agency, board or commission involved, and if appropriate, legal counsel.

After analysis of all information, the findings and recommendations of the review committee will be submitted in writing to the deputy head or designated senior representative of the entity. The Director of Procurement, and the deputy head of the entity or designated senior representative will review the findings, consider any recommendations, render a decision and reply to the complainant.

Replies to a Complaint

The Director of Procurement will make every effort to acknowledge a formal complaint within 10 working days of receipt and to respond in writing no later than 10 working days after completion of any review. If the investigation extends longer than 20 working days, the vendor will be advised, in writing, when they may expect a response. Under all circumstances, responses are to be made in a timely fashion. Copies of the reply will be passed to the Deputy Head and/or a responsible staff member in the department or the authority having the oversight role for the agency, board or commission. Copies of all replies will be available to internal auditors, the Auditor General staff or to other officials as appropriate.

Reports

The Procurement Branch shall ensure that complete documentation and records, including a signed and dated record of all communications with suppliers, are maintained. This will allow later verification by participants, auditors or senior officials to show that the procurement process was carried out in accordance with government procurement policy and that the complaint was filed and handled in a timely fashion.

All complaints are tracked by the Procurement Branch and reported to the CEO of the Office of Economic Development on an annual basis.